

APPLYING FOR LICENSE EXCEPTION ENC

To receive approval from the Bureau of Export Administration (BXA) to export your encryption item under License Exception ENC, you must submit a **classification request**. Please follow the steps outlined below.

Step 1: Read the relevant portions of the Export Administration Regulations (EAR).

This guidance is designed to help you in applying for eligibility to export under License Exception ENC, and should be used in conjunction with the relevant portions of the Export Administration Regulations (EAR). Section 740.17 is the principal regulatory reference for ENC, Section 742.15 explains BXA's encryption policy on the license exception, Section 748.3 and Supplement 1 to Part 748 provide general information on submitting classification requests, and Supplement 6 to Part 742 provides specific details on submitting classification requests for encryption items.

Reminder: Exports of encryption items under ECCNs 5A002, 5D002 and 5E002 to foreign subsidiaries of U.S. companies (as defined in Part 772 of the EAR), do not require a review by BXA prior to export (see Section 740.17(a)(1)). In addition, exports of commercial encryption source code under ECCN 5D002, which are considered publicly available under Section 734.3(b)(3) of the EAR and are subject to licensing fees or royalties for commercial production or sale of any product developed using the source code, do not require a review; however, you must notify BXA at the time of export (see Section 740.17(a)(5)(i)). You do not need to file a classification request for these two License Exception ENC provisions.

Also, for Internet and telecommunication service providers (ISPs and Telcos) Section 740.17(a)(4) clarifies the type of service ISPs and Telcos may provide under a license exception or license. For this provision, a classification request is not required, since the type of service permitted under License Exception ENC depends on whether the encryption product(s) is classified as "retail".

Step 2: Obtain BXA Form 748P

This is the multipurpose application form you use to apply for License Exception ENC. Since it is a multipart form, it is not available for downloading from the Web. However, you can request the form from BXA's homepage. In addition, instead of submitting a paper application form, you can apply over the internet using BXA's Simplified Network Application Process (SNAP).

If you are submitting a request for more than one item, you must also obtain BXA Form 748P-A, which is an item appendix, and follow the instructions for Block 22 for each additional item. You may include up to six items. Follow the instructions on SNAP to add items electronically.

Step 3: Fill in the BXA-748P form.

The form must be typed. For each block of the form, follow the instructions in Supplement 1 to Part 748 for classification requests. When applying for License Exception ENC, follow the additional instructions below.

Block	Instruction
5	mark the classification request box. This is extremely important. DO NOT mark export or reexport. If you do, the application will be returned to you.
9	indicate the phrase " License Exception ENC " in this block. This is used to route the application to an appropriate licensing officer in BXA. If you fail to denote this phrase, the application will be delayed.
14-15	be sure the information in these blocks is complete and correct, because this is where BXA will send the official classification document. If both blocks are filled in, the official document will be sent to the individual or entity identified in Block 15.
22(a)	For software, enter "5D002." For hardware, enter "5A002."
22(j)	provide a brief technical description including the basic purpose of the encryption product and the type of encryption used in the software (e.g., 128-bit RC4 for secure e-mail, 2048 RSA for key exchange). Please DO NOT type 'see letter of explanation' or 'see brochure'. The information identified in this block is entered directly into the BXA computer system, and will be printed on the official classification document issued by BXA. A brief technical description is essential.
24	BXA will determine the specific provisions of ENC for which your product qualifies. Indicate the provisions you believe are applicable: (a) §740.17(a)(2)- "encryption commodities, software and component that are not classified as retail" (b) §740.17(a)(3)-"retail commodities, software or components" (c) §740.17(a)(5)(ii)- "source code"; and/or (d) §740.17(a)(5)(iii)- "general purpose toolkit"

All other blocks or block portions appropriate for classification requests should be completed in accordance with Part 748 of the EAR.

Step 4: Include supporting documents

Supporting documents, such as technical specifications, should accompany the completed BXA 748P form. The supporting documents should contain enough information for BXA to verify the correct classification of the item (e.g., encryption algorithms used and their key space). The supporting documents should also address the specific provisions of ENC for which you are applying. Carefully review the provisions of License Exception ENC, particularly Section 740.17(e) and Supplement 6 to Part 742, which describes how to initiate the technical review and

lists special information requirements.

Additional Guidance for Retail Classification Requests

Here is additional guidance to assist you in understanding classification requests for “Retail” commodities, software and components.

First, review Section 740.17(a)(3) to determine the category of “retail” product your encryption product may be reviewed under in the regulation. The “retail” section contains four categories of encryption products.

A. The first category is encryption commodities, software and components that are generally available to the public by being:

- (1) sold through retail outlets,
 - (2) specially designed for individual consumer use, **or**
 - (3) sold in large volume without restrictions through mail order, electronic or telephone sales.
- For encryption products to qualify as “retail” under this first part, your encryption product has to be distributed in one of these three ways.

Continuing with this first category, your product(s) **cannot** perform any of the following:

- (a) the cryptographic functionality cannot be easily changed by the user,
- (b) does not require substantial support to install and use,
- (c) is not modified or customized for the customer, **and**
- (d) is not designed to be used as network infrastructure products.

The regulation contains an illustrative but not restricted list of examples of products that are considered “retail” under this category.

B. The second category of “retail” products are those that function similarly to other products classified as “retail”. The products are reviewed for their overall functionality and not simply their security functions. We intend to compare products which are similar in function, but may be incorporated differently, i.e., bundled vs. standalone. All of the information provided will be considered to qualify for “retail” and not just the key length of the encryption items.

C. The third category of “retail” products are finance-specific products that are restricted by design for such functions as e-commerce and financial transactions. These products are highly field formatted and are not capable of performing general purpose encryption, such as e-mail messaging.

D. The fourth category of “retail” products are non-mass market 56-bit products with asymmetric key exchanges exceeding 512-bits. These products are based on the key length of the encryption.

You must include a letter of explanation and technical specifications of the encryption product(s) and describe which “retail” category your product(s) qualifies in and why you believe the product(s) meet the above criteria. Your explanation will assist BXA with determining the

proper classification and will expedite the review process. Otherwise, it will be necessary for BXA to call the applicant for this information.

Step 5: Submit the application to BXA

Please submit the **original** BXA Form 748P, 748P-A (if applicable) and support documents, in accordance with Section 748.3(b) EAR, to the following address:

**Bureau of Export Administration
U.S. Department of Commerce
14th Street and Pennsylvania Avenue, N.W.
Room 2705,
Washington, D.C. 20444,
Attn: "Application Enclosed"**

BXA will not accept applications sent C.O.D. If you submit the forms electronically, either through SNAP or ELAIN, please fax the supporting documents to BXA (fax number: 202-501-0784), or send them to the U.S. Department of Commerce, Bureau of Export Administration, Information Technology Controls Division, Room 2625, 14th & Pennsylvania Ave., NW, Washington, D.C. 20230.

A **copy** of the entire application (forms and supporting documents) must also be **express mailed** to the following address (failure to comply will result in delays):

**Attn: ENC Encryption Request Coordinator
9800 Savage Road, Suite 6131
Ft. Meade, MD 20755-6000**